


LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: JULY 2, 2014 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #12: LAFCO 3177 – Reorganization to Include City of Fontana Annexation No. 173 and Detachments from County Service Areas 70 and SL-1 (Almond Avenue Annexation--Southwest Industrial Park Area)

INITIATED BY:

City of Fontana Council Resolution

RECOMMENDATION:

Staff is recommending that the Commission approved LAFCO 3177, by taking the following actions:

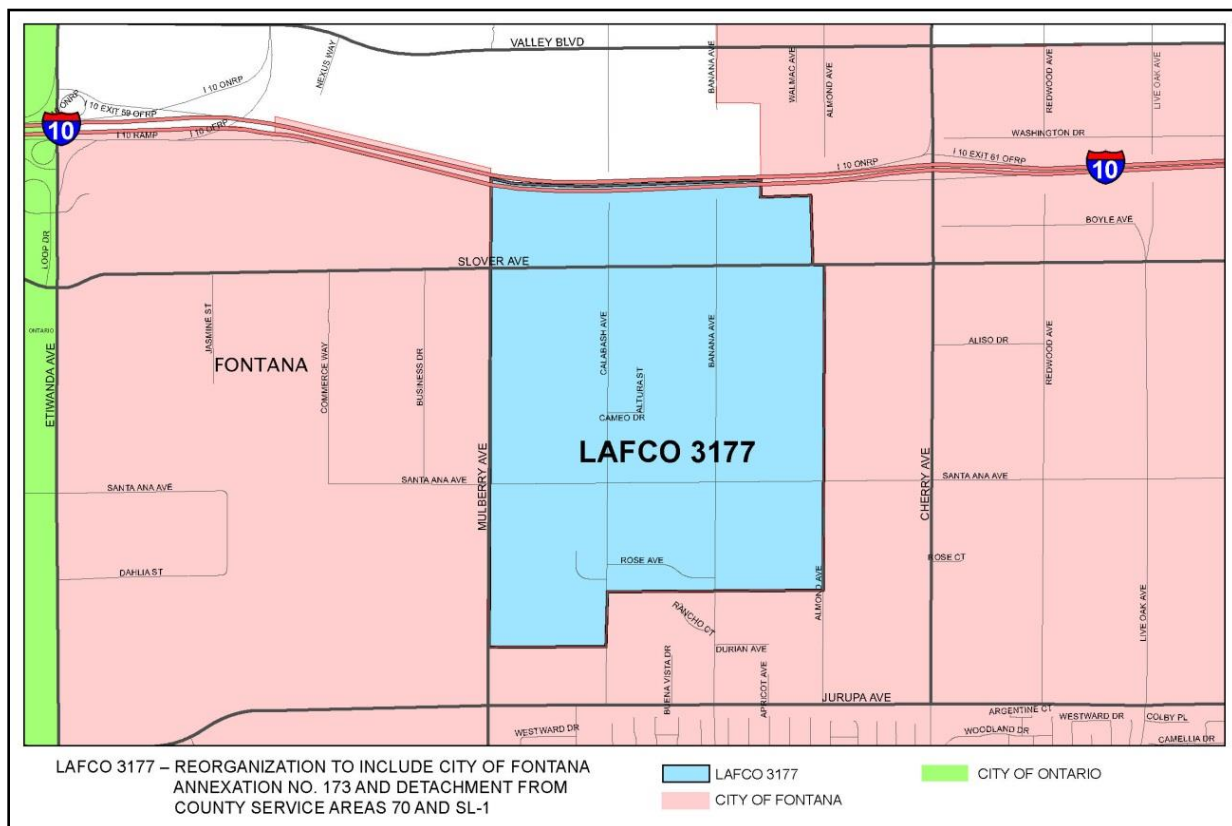
1. Adopt the Statutory Exemption that has been recommended for this proposal and direct the Executive Officer to file the Notice of Exemption within five (5) days;
2. Approve LAFCO 3177, as required by Government Code Section 56375(a)(4), with the following terms and conditions:
 - All streetlights currently the responsibility of County Service Area SL -1 within the annexation area shall be transferred to the City of Fontana upon successful completion of the annexation. The City of Fontana shall sign the authorization form requesting Southern California Edison to transfer the specified lights to the City of Fontana's accounts; and,
 - The standard LAFCO terms and conditions that include the "hold harmless" clause for potential litigation costs, continuation of fees, charges, assessments, and the

identification that the transfer of utility accounts will occur within 90 days of the recording of the Certificate of Completion.

3. Adopt LAFCO Resolution #3184 setting forth the Commission's determinations for LAFCO 3177.

BACKGROUND INFORMATION:

LAFCO 3177 is a reorganization proposal of a substantially surrounded unincorporated area which includes annexation to the City of Fontana (the "City") and detachment from County Service Area (CSA) 70 and CSA SL-1. The reorganization area encompasses approximately 486 acres, generally located south of the I-10 Freeway between Mulberry and Almond Avenues, within the City of Fontana's southerly unincorporated sphere of influence. Location and vicinity maps are included as Attachment #1 to this report.



The City's purposes in initiating this annexation, as outlined in its application, are as follows:

1. To provide efficient and effective municipal services to the area;
2. To provide development consistency within the area through its Southwest Industrial Park (SWIP) Specific Plan; and,

3. To “square off” its boundaries south of the I-10 Freeway, thereby reducing jurisdictional confusion between the City and County boundaries.

The City has been working over the last four years to process this proposal. The City circulated the Notice of Preparation of a Draft Environmental Impact Report (EIR) for the specific plan update and the annexation in September 2009. Then, the City circulated the Notice of Availability of the Draft EIR for the SWIP Specific Plan Update and the Almond Avenue Annexation in October 2011. The City conducted several community outreach meetings with residents and property owners within the area including workshops with property owners in each newly proposed land use district. On many occasions, the City met with individual property owners and businesses during the preparation of the specific plan and Draft EIR. Two additional noticed public meetings were held to present the SWIP Specific Plan and receive comments on the Draft EIR: the first public meeting was held at Kaiser High School on November 9, 2011; the second meeting, a public hearing, was held at the regularly scheduled Planning Commission meeting on November 29, 2011. On May 8, 2012, the City Council held a public hearing certifying the Final EIR for the SWIP Specific Plan Update and Almond Avenue Annexation, and approving the General Plan Amendment, the zone change, and the SWIP Specific Plan project. Finally, on January 14, 2014, the City Council approved Resolution No. 14-001, initiating the City's annexation of the Almond Avenue Annexation, which is now before the Commission as LAFCO 3177.

PROVISIONS FOR SUBSTANTIALLY SURROUNDED ANNEXATIONS:

In staff's view, LAFCO 3177 is a ministerial action for the Commission based upon Government Code Section 56375(a)(4) that requires the Commission to approve the annexation of unincorporated “substantially surrounded” territory, initiated by resolution of the City, if several determinations are made. These determinations include: 1) the territory is surrounded or substantially surrounded by the city to which the annexation is proposed; 2) the territory is substantially developed or developing; 3) the territory is not prime agricultural land; 4) the territory is designated for urban growth by the general plan of the annexing city; and 5) the territory is not within the sphere of influence of another city.

The staff's responses to these determinations are as follows:

- The reorganization area is substantially surrounded by the City of Fontana – surrounded by the City on three sides: a combination of parcel lines and Almond Avenue on the east, a combination of parcel lines east and west of Calabash Avenue on the south, and Mulberry Avenue on the west;
- The reorganization area is substantially developed or developing. This determination is based upon the findings that public utilities are available within the area, there are public improvements within the area, and there are physical improvements on almost all of the properties within the area;

- The reorganization area is not prime agricultural land as defined by Section 56064;
- The reorganization area has been planned as part of the City of Fontana's Southwest Industrial Park (SWIP) Specific Plan, which designates the area with urban growth and urban type land uses; and,
- The reorganization area is wholly within the City of Fontana's sphere of influence.

Based upon the information outlined above, it is the staff's position that these mandatory determinations are clear; therefore, the Commission is required by Government Code Section 56375(a)(4) to approve the proposal initiated by the City of Fontana.

However, this action does not remove the ability of registered voters and landowners within the area to determine whether this proposal is successful through the required protest proceeding.

The following provides a summary of the balance of the issues which the Commission reviews and considers in any jurisdictional change – boundaries, land uses, service delivery and the effect on other local governments, and environmental considerations.

BOUNDARIES:

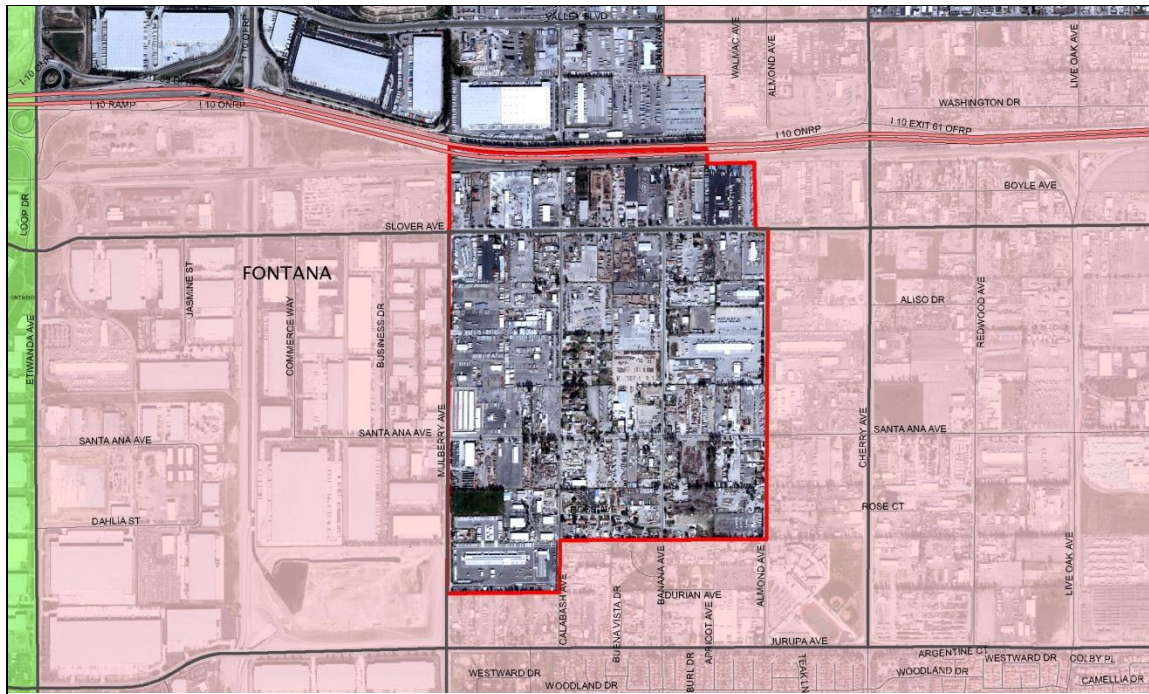
The reorganization area is generally bordered by the centerline of I-10 Freeway on the north; a combination of parcel lines and Almond Avenue on the east (existing City boundaries); parcel lines east and west of Calabash Avenue on the south (existing City boundaries) and Mulberry Avenue on the west (existing City boundaries), within the City of Fontana's unincorporated sphere of influence.

No boundary issue has been identified. It is LAFCO staff's position that this reorganization proposal provides for a logical boundary since it removes substantially surrounded unincorporated territory within the City.

LAND USE:

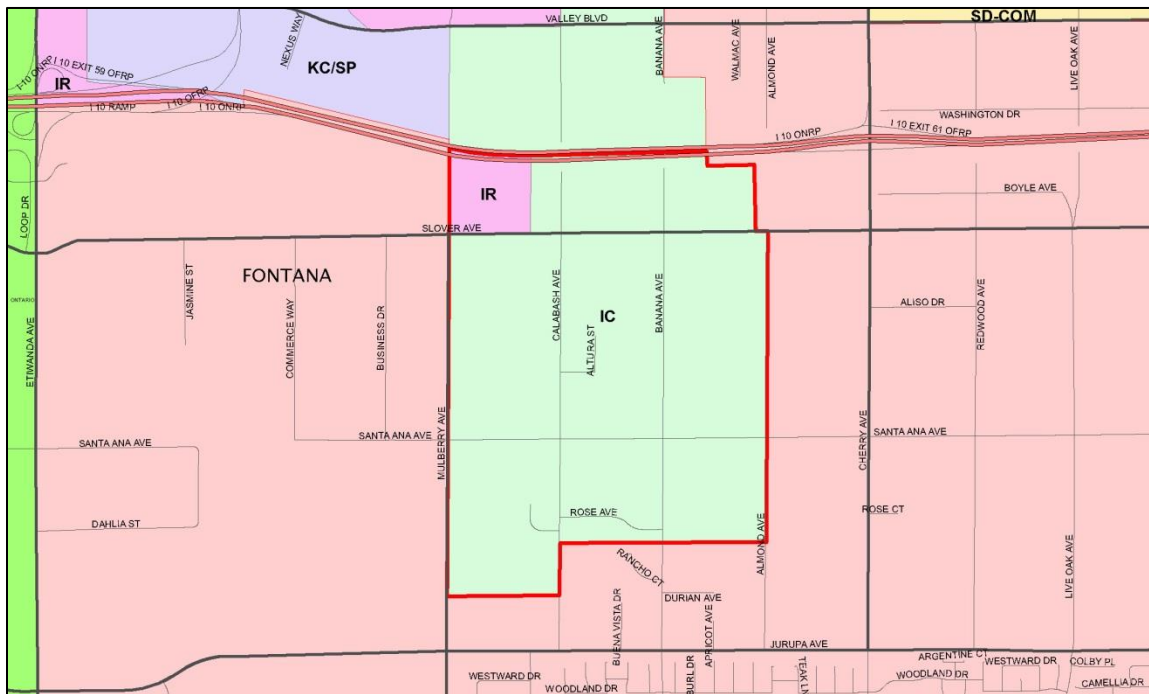
Existing Land Uses:

The reorganization area is a mix of industrial uses, some residential development, a few vacant parcels, the railroad right-of-way, and a portion of the I-10 Freeway right-of-way. Surrounding land uses include the rest of the I-10 Freeway right-of-way and industrial development on the north, primarily industrial development (within the City) on the east, south, and west, and the Kaiser High School (within the City) on the southeast corner.



County Land Use Designation:

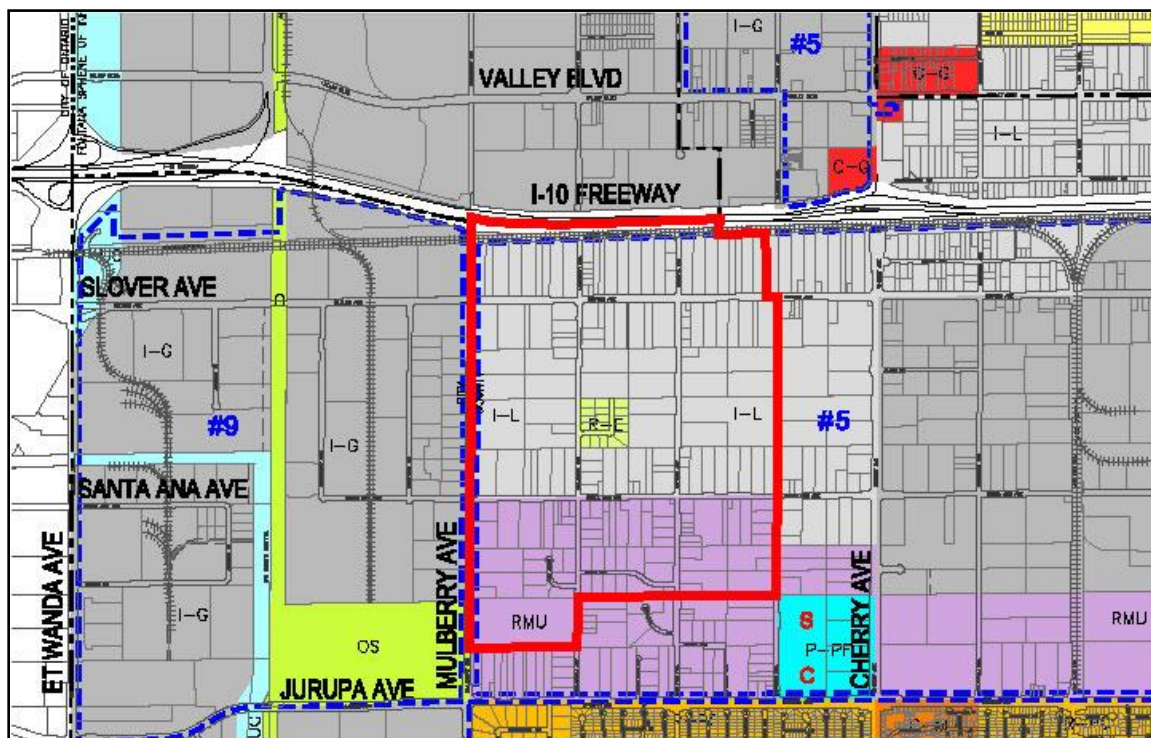
The County's current land use designations for the area are Community Industrial (IC) and Regional Industrial (IR).



Community Industrial allows for light industrial uses such as light manufacturing uses, wholesale/ warehouse services, contract/construction services, transportation services, agriculture support services, incidental commercial and accessing residential uses, and similar and compatible uses. Regional Industrial allows for heavy industrial uses that have the potential to generate severe negative impacts, incidental commercial uses, agricultural support services, salvage operations, and similar and compatible uses.

City's General Plan:

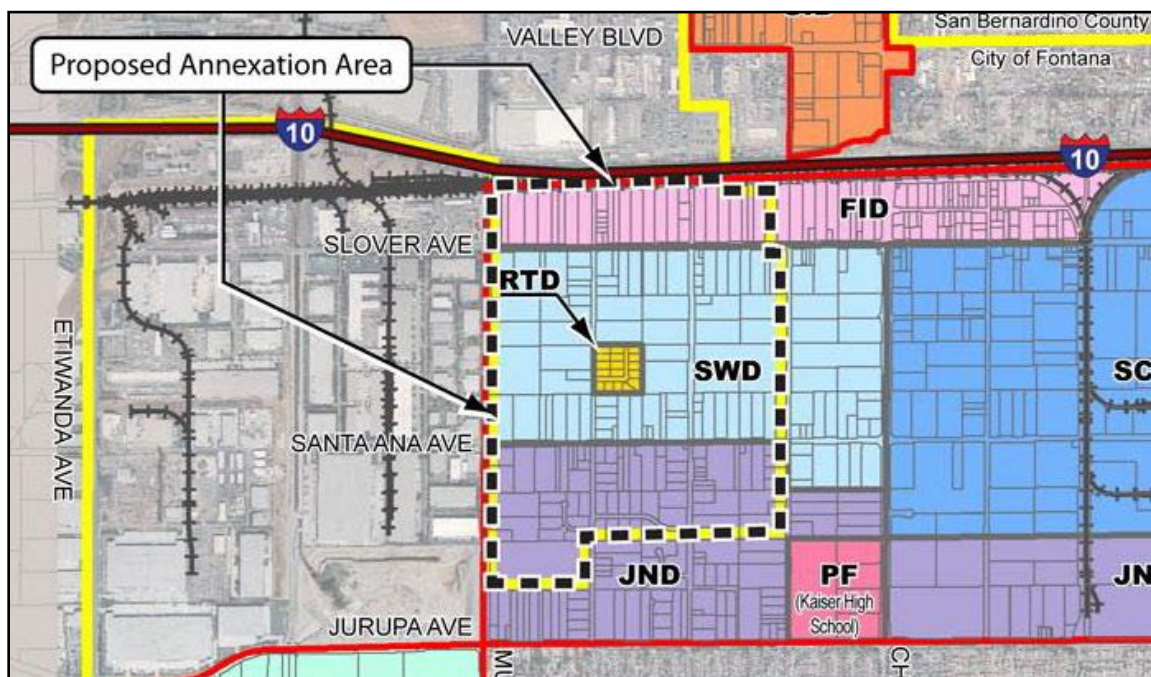
The City's General Plan designates the area as part of the SWIP Specific Plan with land use designations for the area as Light Industrial (I-L), Regional Mixed Use (RMU), and Residential Estates (R-E).



Light Industrial allows for employee intensive uses including business parks, research and development, technology centers, corporate and support office uses, clean industry and supporting retail uses, auto, truck and equipment sales, and other related services. Regional Mixed Use are intended as centers for employment generating commercial and industrial uses (e.g. specific development related to research and development facilities, general commercial uses, corporate business parks, light manufacturing, etc.). Residential Estates are intended for rural type residential development. As outlined above, the land use determinations between the City and County are generally compatible.

City's Pre-Zone Designations:

The City processed the pre-zoning for the entire area through its review and adoption of the SWIP Specific Plan. The City's pre-zone designations for the overall reorganization area as identified in its Specific Plan #5 (Southwest Industrial Park) are: Freeway Industrial/Commercial District (FID), Slover West Industrial District (SWD), Jurupa South Industrial District (JSD), and Residential Trucking District (RTD). These pre-zone designations were determined through the City's consideration of Ordinance No. 1662 approving Zone Change No. 09-009 to reflect adoption of Specific Plan #5 and Ordinance No. 1663 approving Specific Plan No. 09-002 (Southwest Industrial Park Specific Plan), both of which were adopted on June 12, 2012.



These pre-zone/specific plan designations are consistent with the City's General Plan land use designations for the area and are also consistent with surrounding land uses.

Pursuant to the provisions of Government Code Section 56375(e), these zoning designations shall remain in effect for a period of two (2) years following annexation. The law allows for a change in designation if the City Council makes the finding, at a public hearing, that a substantial change has occurred in circumstances that necessitate a departure from the pre-zoning outlined in the application made to the Commission. All existing legal uses and improvements within the reorganization area, as well as all legal non-conforming uses and improvements that were established through the County, shall be grandfathered-in the City.

As a part of this review, LAFCO staff requested that the County's Land Use Services Department provide information on planning projects (e.g. TPM's, CUP's, etc.), building permits, and active enforcement actions on parcels within LAFCO 3177, and requested the City and County staff to go over the information provided, and to agree on a process to transfer these projects/permits/code enforcement actions upon completion of the annexation. The City has drafted a set of policies related to the transfer of land use applications/entitlements and code enforcement actions that was agreed upon by both the County and the City to become effective upon completion of the annexation. These are generally outlined as follows (included as a part of Attachment #3):

- a. Illegal Land Uses will be evaluated for validity and type of violation/problem and handled in the following manner:
 - Year One: Staff will make initial contact with violators to educate/advise about City standards and seek voluntary compliance.
 - Year Two: Staff will initiate the compliance process with properties that remain non-compliant after a year of advisement.
 - Year Three: Remaining non-compliant properties will enter the compliance process.

In addition, the City proposes the following general case types to be handled during the proposed moratorium period:

- b. Weed Abatement will be addressed in the manner consistent with current policy and requirements.
- c. Illegal dumping will be addressed on a case-by-case basis.
- d. Animal Licensing will be addressed by the City's animal license canvassers with a 1-year education/advisement period, encouraging voluntarily dog licensing.
- e. Business License will be addressed with a 1-year education/advisement period.
- f. Health Life Safety Issues will be handled on an individual basis depending upon the specifics of each case.
- g. Complaints will be logged-in and processed as normal up to the point of verifying the validity of the complaint and determining when the violation/matter commenced. If a complaint is received prior to the effective date of the annexation, then the matter will be handled as indicated above. If the complaint is received after the effective date of the annexation, then the matter will be handled as currently handled throughout the City.
- h. County Code Enforcement compliance cases begun by County Code Enforcement will be continued to a disposition by City of Fontana Code Compliance. Properties

that have current County Code Enforcement cases will not receive the grace periods.

- i. County Land Use Entitlements: The City and County have agreed to the following policies regarding land use entitlements and related processes:
 - Planning Process – The City will honor any land use entitlement approved by the County staff, Planning Commission and/or Board of Supervisors prior to the completion of the annexation.
 - Building Plan Check Process – The County shall complete any plan check in process prior to the completion of the annexation. Once the plan check is approved (stamped Approved) by County, the applicant shall turn in the approved plans to the City for permitting and inspections. The City will provide the permits and collect the related permit fees; however, the City would not charge the City's Development Impact Fees (DIFs) (unless otherwise conditioned) as these projects would not have been required to pay for the City's DIFs if still within the County's jurisdiction. If plans are approved and permitted by the County, the County will continue with the inspections and approve any permits to Final status and provide the Certificate of Occupancy.

SERVICE ISSUES AND EFFECTS ON OTHER LOCAL GOVERNMENTS:

In every consideration for jurisdictional change, the Commission is required to look at the existing and proposed service providers within an area. Current County service providers within the reorganization area include County Service Area SL-1 (streetlighting entity), and County Service Area 70 (multi-function entity). In addition, the following entities overlay the reorganization area: Fontana Fire Protection District (fire protection/paramedics), the Inland Empire Utilities Agency (wastewater treatment services), Inland Empire Resource Conservation District and the Metropolitan Water District of Southern California (the State Water Contractor). The Fontana Water Company, a private water company that provides retail water service, also overlays the reorganization area.

The City has provided a "Plan for Service" for this proposal as required by law and Commission policy. The City's Plan for Service includes a Financial Impact Analysis which indicates a slight initial negative impact. However, with a large number of trucking, transportation, and service centers along with various underutilized light industrial and mixed use zoned properties within the area, the City anticipates the area to develop further into a more favorable revenue stream to fund the delivery of its services. The Plan is included as part of Attachment #2 to this report for Commission review. In general, it identifies the following:

- The City provides for the sewage collection system within its boundaries, while the treatment of wastewater is the responsibility of the Inland Empire Utilities Agency. None of the parcels within the reorganization area will be required to connect to sewer following the annexation unless a septic system failure occurs or if a future development project anticipates sewer service requirement.

- Water service is currently provided by the Fontana Water Company, a private water company regulated by the Public Utilities Commission. No change will occur for this service provider on the basis of this annexation.
- Law enforcement responsibilities will shift from the San Bernardino County Sheriff's Department and California Highway Patrol to the City of Fontana Police Department. The City has indicated that there will be no additional modifications to its Police Department through approval of this annexation and that it has sufficient personnel and equipment to adequately serve the area.
- Solid waste services are currently provided within the reorganization area and within the City of Fontana by Burrtec Waste Industries. No change in service provider will occur through the annexation. The City provides a free commercial recycling program for Fontana businesses and city residents are also offered a more comprehensive scope of services including automated pickup of green waste, frail/handicapped service, free curbside used oil and filter pickup, and free additional recycling bins. In addition, the City's contract with Burrtec also offers, for a charge, additional services such as commercial refuse compactor bin and roll-off containers services.
- Fire protection and paramedic services are currently provided by the Fontana Fire Protection District, a subsidiary district of the City. No change will occur to this service provider through the reorganization. The City has indicated that no new equipment and personnel would be needed to maintain service within the area.
- Streetlighting is currently funded within the reorganization area through County Service Area SL-1. While the Plan for Service does not outline this service, the Commission's adopted policy requires documentation of the transfer of this responsibility through verification of lighting facilities to be transferred and requiring the City to submit a signed form authorizing the transfer upon completion of the annexation. LAFCO staff has verified that there are 27 lights to be transferred to the City upon completion of the reorganization proposal.

It is the position of staff that LAFCO 3177 is a straightforward and logical extension of service delivery by the City of Fontana. As required by Commission policy and State law, the Plan for Service submitted by the City of Fontana indicates that the extension of its services will maintain, and/or exceed, current service levels provided by the County and its special districts.

ENVIRONMENTAL CONSIDERATIONS:

It is to be noted that the City of Fontana certified the Final Environmental Impact Report that was prepared for its Southwest Industrial Park (SWIP) Specific Plan and Almond Annexation Area, which pre-zoned the entirety of the reorganization area.

However, the Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this proposal and has indicated that it is his recommendation that the reorganization is statutorily exempt from the California Environmental Quality Act (CEQA). This determination is based on the fact that the Commission has no discretion in its review of this proposal and must approve the project. Such a "ministerial action" is exempt from environmental review pursuant to Section 15268 of the State CEQA Guidelines. Therefore, it is recommended that the Commission adopt a Statutory Exemption for this proposal.

CONCLUSION:

It is the staff's position that LAFCO 3177 is a ministerial action - one which the Commission has no discretion but to approve. This position is based on the requirements set forth in Government Code Section 56375(a)(4), which reads as follows:

(4) A commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following:

(A) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city. ...

LAFCO staff outlined its determinations on these specific requirements contained in State law that obligates the Commission to approve LAFCO 3177. Even without this mandate, LAFCO staff would still support approval of LAFCO 3177 as the reorganization area will benefit from the full range of municipal services available through the City of Fontana. Therefore, for all the reasons outlined in the report, staff recommends approval of LAFCO 3177.

DETERMINATIONS:

The following determinations are required to be provided by Commission policy and Government Code Section 56668 for any change of organization/reorganization proposal:

1. The County Registrar of Voters Office has determined that the reorganization area is legally inhabited, containing 149 registered voters as of June 2, 2014.
2. The County Assessor has determined that the total assessed value of land and improvements within the reorganization area is \$109,502,225 (land - \$71,590,324 -- improvements - \$37,911,901).
3. The area is within the sphere of influence assigned the City of Fontana.
4. Commission review of this proposal has been advertised in *The Sun*, a newspaper of general circulation within the reorganization area. Individual notice has been

provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.

5. LAFCO staff has provided individual notice to the landowners and registered voters within the reorganization area (totaling 318) and to landowners and registered voters surrounding the reorganization area (totaling 494) in accordance with State law and adopted Commission policies. To date, no written comments in opposition have been received.
6. The reorganization area was included in the City's Southwest Industrial Park Specific Plan which also pre-zoned the reorganization area for the following land uses: Freeway Industrial/Commercial District (FID), Slover West Industrial District (SWD), Jurupa South Industrial District (JSD), and Residential Trucking District (RTD). These pre-zone/specific plan designations are consistent with the City's General Plan and surrounding land uses within the City and in the County. Pursuant to the provisions of Government Code Section 56375(e), these pre-zone designations shall remain in effect for two years following annexation unless specific actions are taken by the City Council.

The Southern California Associated Governments (SCAG) adopted its 2012-2035 Regional Transportation Plan and Sustainable Communities Strategy pursuant to Government Code Section 65080. LAFCO 3177 includes the southern portion of the I-10 Freeway, which is part of the RTPs high-occupancy vehicle (HOV) lane project for completion by 2020.

The City has outlined policies related to the transfer of land use applications/entitlements and code enforcement actions that were agreed upon by both the County and the City. These policies will be effective upon completion of the reorganization.

7. The Commission's Environmental Consultant, Tom Dodson and Associates, has indicated that the review of this reorganization is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of this application is ministerial, in that based upon the findings required by Government Code Section 56375(a)(4), the Commission has no discretion in its action; it must approve the proposal. Therefore, a Statutory Exemption as authorized under Section 15268 of the State CEQA Guidelines is appropriate. A copy of Mr. Dodson's response is included for the Commission's review as Attachment #5 to this report.
8. The area in question is presently served by the following local agencies:

County of San Bernardino
Inland Empire Utilities Agency (regional wastewater treatment services)
Inland Empire Resource Conservation District
Metropolitan Water District of Southern California (the State Water Contractor)

Fontana Fire Protection District (fire protection/emergency medical response)
County Service Area SL-1 (streetlighting entity)
County Service Area 70 (multi-function unincorporated area Countywide)

County Service Area 70 and County Service Area SL-1 will be detached as a function of the reorganization. None of the other agencies are affected by this proposal as they are regional in nature.

9. The City of Fontana has submitted a plan for the extension of municipal services to the reorganization area, as required by law. This plan is included as part of Attachment #2 to this report, which indicates that the City can, at a minimum, maintain the level of service delivery and can improve the level and range of selected services currently available in the area.
10. The proposal complies with Commission policies that indicate the preference for areas proposed for development at an urban-level land use to be included within a City so that the full range of municipal services can be planned, funded, extended and maintained.
11. The reorganization area can benefit from the availability and extension of municipal services from the City of Fontana and has benefitted from the delivery of fire protection and emergency medical response services through the City's subsidiary district, the Fontana Fire Protection District.
12. This proposal will not assist in the City's ability to achieve its fair share of the regional housing needs since majority of the reorganization area is zoned for industrial uses and the portion zoned for residential is already built-out.
13. With respect to environmental justice, the reorganization area would benefit from the extension of services and facilities from the City of Fontana and, at the same time, will not result in unfair treatment of any person based on race, culture or income.
14. The County of San Bernardino and the City of Fontana have successfully negotiated a transfer of property tax revenues that will be implemented upon completion of this reorganization. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.
15. The map and legal description, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

KRM/sm

Attachments:

1. [Vicinity and Location Maps of the Reorganization Area](#)

2. [City of Fontana Resolution No. 2014-001, Application, Plan for Services Including Financial Impact Analysis](#)
3. [Letter from the City of Fontana on Policies/Processes on Land Use Applications/ Entitlements/Code Enforcement Actions Upon Completion and Letter from the County Regarding Concurrence to the Policies/Processes](#)
4. [Response from Tom Dodson and Associates](#)
5. [Draft Resolution No. 3184](#)